



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374

IN REPLY REFER TO:

5720

Ser 14/107

April 9, 2019

Mr. Eric Bradley  
MuckRock News  
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SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUEST  
CNPC20190224/DON-NAVY-2019-003862; FOIA APPEAL DON-NAVY-  
2019-004926

This responds to your letter received in this office on March 22, 2019, in which you stated you would “like to appeal CNPC20190224/DON-NAVY-2019-003862.” Your initial request sought the Official Military Personnel File (OMPF) for “Kevin Banker.” The Bureau of Naval Personnel, the initial denial authority (IDA), determined that it did not possess any responsive records based on the limited identifying information you provided.

Your appeal is a request for a final determination under the FOIA. For the reasons set forth below, your appeal is denied.

In its response to you, the IDA noted that a thorough search of its electronic medical record repositories was conducted, and determined it does not possess the documents you requested. You have appealed the IDA’s response to you but offer no specific basis or reason for the appeal. I am interpreting your letter as an appeal challenging the adequacy of IDA’s search for the requested records.

The adequacy of an agency’s search for information requested is determined by a “reasonableness” test. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Weisberg v. United States Dep’t of Justice*, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983). As a general rule, an agency must undertake a search that is reasonably calculated to locate the requested information. *Kowalczyk v. Department of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996). Courts have found agencies satisfy the “reasonableness” test when they properly determine where responsive records are likely to be found and search those locations. *Lechlitter v. Rumsfeld*, 182 F. App’x 113, 115 (3rd Cir. 2006) (concluding that agency fulfilled duty to conduct a reasonable search when it searched two offices that it determined to be the only ones likely to possess responsive documents (citing *Oglesby v.*

*U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-56 (D.D.C. 2012) (concluding that agency's search was reasonable because agency determined that all responsive records were located in a particular location created for express purpose of collecting records related to subject of request and searched that location).

Moreover, courts have found that an agency's inability to locate a responsive record does not undermine an otherwise reasonable search. *Moore v. FBI*, 366 F. App'x 659, 661 (7th Cir. 2010) (noting that although agency had years earlier destroyed some potentially responsive records, that fact does not invalidate the search). Additionally, the mere speculation that requested documents exist does not undermine the finding that the agency conducted a reasonable search. *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004) ("Likewise, the agency's failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.").

Following receipt of your FOIA appeal letter, my staff contacted the IDA. Personnel at the IDA confirmed that the command maintains systems of records searchable by both name and social security number. The IDA searched its system using the name you provided, but found no responsive records. Additionally, my office provided the IDA with your appeal letter in which you state you believe the middle name of Kevin Banker was "Alan" and his dates of service was approximately 1978 to 1984. The IDA used this supplemental information to search again, but found no responsive records. Because the IDA conducted searches of its records using information you provided, I find its searches to be reasonable. Therefore, your appeal based on the adequacy of IDA's search is denied. As the IDA suggested, if you can determine a different middle name or more specific service dates or birth date, the IDA will be glad to search again, but they have not found documents responsive to your request given the information you have provided.

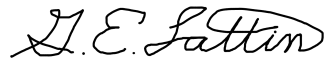
As the Department of the Navy's designated adjudication official for this FOIA appeal, I am responsible for the denial of your appeal. You may seek judicial review of this decision by filing a complaint in an appropriate U.S. District Court. My office represents the U.S. government and is therefore unable to assist you in this process.

If you would like to seek dispute resolution services, you have the right to contact the Department of the Navy's FOIA public liaison, Mr. Christopher Julka, at

5720  
Ser 14/107  
April 9, 2019

christopher.a.julka@navy.mil or (703) 697-0031. If you have further questions or concerns for my office, my point of contact is Major James McKeon, USMC, who may be reached at james.mckeon@navy.mil or (202) 685-5396.

Sincerely,

A handwritten signature in cursive script that reads "G. E. Lattin".

G. E. LATTIN  
Director  
General Litigation Division

Copy to:  
BUPERS 00J6  
DNS-36  
DON OCIO